

**IN THE UNITED STATES BANKRUPTCY COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

In Re:	}	Case No.: 20-13482
	}	
RHA STROUD, INC., ¹	}	Chapter 11
Debtor.	}	
	}	[Jointly Administered]

**FP GROUP'S REPLY TO THE DEBTORS' RESPONSE TO THE
MOTION TO DISMISS OR ABSTAIN**

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Dated this 4th day of December 2020.

¹ The Debtors in these cases, along with the last four digits of their federal tax identification numbers, are: RHA Stroud, Inc. (2635) and RHA Anadarko, Inc. (2528). The principal place of business for the Debtors is 2308 Highway 66 West, Stroud, OK 74079 and 1002 East Central Blvd. Anadarko, OK 73005, respectively.

REPLY IN SUPPORT²

These bankruptcy cases were commenced in bad faith and the proper resolution is dismissal (or abstention) in favor of the existing Receivership Proceeding. It was in that proceeding that, after a full evidentiary hearing, the state court entered a written decision authorizing the appointment of David Rhoades as a receiver for the Debtors. These cases were commenced shortly before entry of an order appointing Mr. Rhoades. The United States Trustee has joined the Dismissal Motion and no creditor opposes it. The only opposing parties are the Debtors themselves—entities with no employees and no business, with a single individual controlling the Debtors through One Cura, a shell company that itself has no other employees or operations³ and yet has sought to pull out \$1.5 million a year from the Debtors.

The Debtors' Response falls far short of demonstrating that these cases should stay in chapter 11 and ignores three basic facts: *one*, the Debtors are hopelessly insolvent, and that will not change; *two*, there is and can be no rise in profit from any alleged cost saving that will benefit the Debtors (or their creditors) regardless of the entity that manages the hospitals; and *three*, the Hospitals have been superbly managed by FP Group, as admitted to by Debtors.⁴ It makes no sense to continue with these cases when a receiver stands ready to step in and can ensure uninterrupted management of the hospitals in the midst of the COVID-19 pandemic. Moreover, the Debtors' arguments fly in the face of the sworn testimony of Charles Eldridge, the One Cura

² All terms not otherwise defined herein have the same meanings as defined in the "FP Group's Amended Motion to Dismiss or Abstain, With Brief, And with Notice of Opportunity for Hearing" (the "**Dismissal Motion**") (Dkt. No. 65).

³ Transcript of Sept. 14, 2020 Hearing, a true and correct copy of the pertinent pages is attached hereto as Ex. 1, at 114:17-20.

⁴ *Id.* at 46:5-12 and 157:10-14.

principal, during the Section 341(a) meeting of creditors on November 30, 2020.⁵ That testimony, as explained below, largely refutes the Debtors' arguments and further supports dismissal.

A. The Debtors' Arguments Concerning a New Management Contract in This Two-Party Dispute Are Misleading and Without Any Legal Merit

Debtors' main argument is that the Debtors commenced these cases to reject the existing contracts with the FP Group and enter into new contracts.⁶ This argument has no merit.

First, nothing suggests these cases were commenced to find a new manager that would be less expensive and generate profit for the Debtors' estates: the reason was plainly to evade the receivership. The timing of the chapter 11 filing is telling—it was filed *after* the state court ordered the appointment of a receiver and just weeks before a hearing on the form of order. There was nothing else occurring that explains the timing or desire to seek a new manager after over nine years have run on a ten-year-term contract, which terminates in October 2021. Moreover, if the Debtors actually commenced these cases with the goal of reducing the costs of management services, one would expect it to be mentioned in Mr. Eldridge's first day declaration, but it is not.

Further, if the Debtors believed that the FP Group's charges for services were too high, one would have expected the Debtors to attempt to negotiate with the FP Group, since the FP Group employs all of the staff at the Hospitals, and it is far more disruptive to patient care to have all current management displaced, all employees terminated, and hope that Arcadia as a replacement manager—which did not even exist until November 23 and has no demonstrated financial wherewithal and capability to perform—can step in without disruption.

Indeed, Mr. Eldridge confirmed at the Section 341(a) meeting that the Debtors had

⁵ A true and correct copy of the transcript of the Section 341(a) hearing is attached as Exhibit 2.

⁶ *See, e.g.*, Response at 1; *see also* Ex. 2 at 10:1-14.

considered chapter 11 many months beforehand, and had even spoken to potential replacement managers in January 2020,⁷ but did nothing for months—the only inference to be drawn is that Debtors gambled on the receivership, lost, then scrambled to avoid the outcome. That is bad faith.

Second, the Response claims there will be substantial cost savings, but wholly ignores that the way Medicare operates makes it virtually impossible for the Debtors to generate any free cash flow from the hospitals by replacing a manager. The hospitals are critical access hospitals (“CAH”), thereby reimbursed by Medicare at 101% of costs. A CAH hospital does not work like a regular business where a decrease in costs increases profits. When the costs of management are lowered at a CAH, the reimbursement from Medicare will be lowered proportionally with any decrease in management fees—Mr. Eldridge admits as much.⁸ Thus, a decrease in management fees may potentially lower monthly losses on the hospitals’ books but will *not* provide meaningful free cash flow or profit to these hospitals; it just results in a decrease in the reimbursement from Medicare.⁹ This has been entirely ignored by the Debtors in their Response. For example, the alleged \$35 million in cost savings (which the FP Group strongly disputes) would likely result in over \$26 million in *decreased* Medicare reimbursements, and the Debtors would under any circumstances still lose tens of millions of dollars next year.

In fact, it appears the Debtors and their proposed new manager hope to finance operations in the short term by overbilling Medicare.¹⁰ Mr. Eldridge testified that it may take at least a year to report a cost adjustment (if this Court approves a replacement manager) to Medicare,¹¹ which

⁷ *Id.* at 10:1-14, 44:15-25, 59:7-13. Debtors filed their counter- and cross- claims in state court, which further evidences their intent to litigate in state court.

⁸ *Id.* at 38:24-39:10.

⁹ *Id.* at 37:22-39:5.

¹⁰ *Id.* at 52:23-53:12.

¹¹ *Id.* at 38:24-39:10.

would create a substantial overpayment to the hospitals from Medicare in the meantime. The following year, however, this overpayment would be owed back to Medicare. With a substantial amount owed, repayment would risk the hospitals shutting down, as Medicare likely will exercise a right to claw-back any overpayment by shutting off revenues to the hospitals until repaid in full.¹² Mr. Eldridge is well aware of how Medicare payments work. This further evidences Debtors' bad faith in bringing these cases under the guise of a new, cheaper, management agreement.

Third, despite populating its Response with *ad hominem* attacks on the FP Group for what it charges, One Cura already admitted in 2017 that the costs charged by the FP Group reflected fair market value (which they do). The cost structure now is identical to that in 2017.

Fourth, missing from the Response, but admitted by Mr. Eldridge, is that if he is successful in replacing the existing management of the hospitals with Arcadia, Arcadia will ensure that One Cura—the Debtors' sole shareholder—receives \$62,500 each month for each hospital, amounting to \$1,500,000 each year.¹³ Mr. Eldridge admitted at the 341(a) meeting that the services performed by One Cura have not significantly changed from when it was charging \$12,500 each month for each hospital.¹⁴ One Cura's decision to increase its "director fee" compensation from \$12,500 each month per hospital to \$100,000 each month per hospital began the events that led RH Acquisition and FP Realty to consider state court litigation. Mr. Eldridge testified that in 2018 he instructed the management company to start paying \$100,000 each month per hospital and that the increase was made in order to expand and build a team for One Cura—something that, as admitted by Mr. Eldridge, did not happen.¹⁵ One Cura's unilateral change in its fees pulled

¹² See 42 C.F.R. § 405.371; 42 C.F.R. § 405.373.

¹³ Ex. 2 at 44:6-14.

¹⁴ *Id.* at 66:17-67:11.

¹⁵ *Id.* at 61:15-62:10, 64:25-65:11.

millions of dollars away from legitimate bills of the Hospitals, including amounts the FP Group had been deferring. Those improper actions created acrimony between the FP Group and Debtors. Now, One Cura is trying to cement a benefit peculiar to it to the detriment of every other creditor, which further evidences the bad faith permeating these cases.

B. The Response Ignores There Is No Viable Path to Reorganization

The Debtors cannot confirm a viable plan of reorganization. One, Mr. Eldridge acknowledges the Lease terminated prepetition, a fact known before filing.¹⁶ Debtors cannot reorganize without the Lease, as the Hospitals' licenses are tied to the specific geographical location of the buildings.¹⁷ Two, the Debtors concede they are hopelessly insolvent (and are already administratively insolvent), and have no credible argument that there can be an impaired consenting class that could result in a confirmable plan. The FP Group constitutes the overwhelming majority of creditors and will not vote in favor of any plan proposed by the Debtors or One Cura.¹⁸ The Response makes the speculative comment it may be possible to find an impaired consent class, but even Mr. Eldridge recognizes¹⁹ that, but for the bankruptcy filing, all other creditors would have been paid in the ordinary course, and the vast majority of creditors will in fact have been paid as critical vendors.

CONCLUSION

The cases were filed in bad faith to evade the receivership, and nothing in the Response changes that fact. But even more so, virtually every relevant factor favors dismissal or abstention.

¹⁶ *Id.* at 35:4-11.

¹⁷ Oklahoma Administrative Code ("OAC") 310:667-1-3(a)(1). The Debtors admit there is no money to cure the lease. *See* Ex. 2 at 35:12 through 37:2.

¹⁸ Debtors argue that because a motion to terminate exclusivity was filed, FP Group concedes that a plan could be confirmed. This ignores the simple fact that Debtors cannot confirm a plan.

¹⁹ Ex. 2 at 17:4-19, 78:14-5.

CERTIFICATE OF SERVICE

This shall certify that on this 4th day of December, 2020, I electronically transmitted the attached document to the Court Clerk using the CM/ECF System and transmittal of a Notice of Electronic Filing to the counsel registered for ECF in this case.

This shall further certify that on this 4th day of December, 2020, I served a true and correct copy of the above and foregoing via U.S. Mail, postage prepaid, to the parties listed on the Matrix attached hereto and on all parties listed below:

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